

Manitoba Residential  
Tenancies Commission

**Annual Report  
2015-2016**



## Manitoba Residential Tenancies Commission

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Her Honour the Honourable Janice C. Filmon, C.M., O.M.  
Lieutenant Governor of Manitoba  
Room 235, Legislative Building  
Winnipeg, MB R3C 0V8

May It Please Your Honour:

I have the privilege of presenting, for the information of your Honour, the Annual Report of the Residential Tenancies Commission for the year ended March 31, 2016.

Respectfully submitted,

*“Original Signed By”*

Honourable Heather Stefanson  
Minister of Justice  
Attorney General





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Honourable Heather Stefanson  
Minister of Justice  
Attorney General of Manitoba  
Room 104, Legislative Building  
Winnipeg, MB R3C 0V8

Dear Minister:

Section 151(1) of *The Residential Tenancies Act* states that within six months after the end of each fiscal year, the Chief Commissioner shall submit an annual report to the Minister respecting the activities of the Commission and setting out the significant decisions of the Commission and the reasons for those decisions.

It is my pleasure to submit the Annual Report for the Residential Tenancies Commission for the fiscal year ended March 31, 2016.

Respectfully submitted,

*“Original Signed By”*

Jennifer Goldenberg  
Chief Commissioner  
Residential Tenancies Commission



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## INTRODUCTION

The Residential Tenancies Commission (the Commission) is a quasi-judicial, specialist tribunal that hears appeals from decisions and orders of the Director of the Residential Tenancies Branch under *The Residential Tenancies Act*.

### **The Residential Tenancies Commission consists of:**

- The Chief Commissioner - a full-time position; appointed for up to a five-year term, located in Winnipeg.
- Deputy Commissioners – one full-time position appointed for up to a four-year term and 16 part-time positions appointed for up to a four-year term, located in Winnipeg, Brandon and Virden. The Deputy Commissioners may exercise the powers and perform the duties of the Chief Commissioner.
- Panel members – 36 panel members – approximately half representing the views of the landlords, the others the views of the tenants; from Winnipeg, Portage La Prairie, Thompson and Brandon.

The Commission may conduct hearings orally, in person or by telephone, in writing or partly orally and partly in writing. Hearings outside of Winnipeg are held at the nearest judicial district.

Some appeals are heard only by the Chief Commissioner or Deputy Chief Commissioner and some appeals are heard by a panel of three consisting of one landlord and one tenant representative and either the Chief Commissioner or a Deputy Chief Commissioner as the neutral Chairperson. If there is not a majority decision, the decision of the neutral Chairperson is the decision of the Commission.

The Residential Tenancies Commission decisions in Part 1 – 8 matters can be appealed to the Court of Appeal, but only on a question of law or jurisdiction. A Court of Appeal judge must grant leave or permission to appeal. Section 179 of *The Residential Tenancies Act*

dealing with rent regulation states that: “*No appeal lies from a decision or order of the commission made in a matter arising under Part 9.*” The Residential Tenancies Commission's decision in Part 9 matters is final.

*The Residential Tenancies Act* requires the Chief Commissioner to submit a report on the administration of the *Act* to the Minister within six months after the end of each fiscal year. The reporting period for this report is the fiscal year ending March 31, 2016\*. Figures for the fiscal year ending March 31, 2015, have also been provided for purposes of comparison. The statistics are broken down by activity, i.e. security deposits, repairs, utilities.

\*This represents a change as the Residential Tenancies Commission previously reported on a calendar year basis. The change will provide more effective reporting as it will be easier to find information and link data, including statistics between the Residential Tenancies Branch and the Residential Tenancies Commission.

## INTRODUCTION

La Commission de la location à usage d'habitation (la Commission) est un tribunal quasi-judiciaire spécialisé chargé d'entendre les appels des décisions et des ordonnances que rend le directeur de la Direction de la location à usage d'habitation en vertu de la *Loi sur la location à usage d'habitation*.

### **La Commission de la location à usage d'habitation se compose :**

- du commissaire en chef – poste à temps plein; nommé pour une période de cinq ans maximum et basé à Winnipeg;
- des commissaires adjoints – un poste à temps plein, occupé pour une période de quatre ans maximum, et 16 postes à temps partiel, occupés pour une période de quatre ans maximum; basés à Winnipeg, à Brandon et à Virden. Les commissaires adjoints peuvent exercer les pouvoirs et les fonctions du commissaire en chef;
- des membres des comités (36) – une moitié approximativement représente le point de vue des locateurs, l'autre moitié celui des locataires; basés à Winnipeg, Portage-la-Prairie, Thompson et Brandon.

La Commission peut tenir des audiences à l'oral (en personne ou par téléphone) ou par écrit, ou encore en partie à l'oral et en partie par écrit. Les audiences à l'extérieur de Winnipeg ont lieu dans le district judiciaire le plus proche.

Certains appels ne sont entendus que par le commissaire en chef ou par un commissaire en chef adjoint, alors que d'autres appels sont entendus par un comité composé de trois personnes, à savoir un représentant du locateur, un représentant du locataire et un commissaire neutre, le commissaire en chef ou l'un des adjoints, qui préside. En l'absence de majorité, la décision du président neutre est la décision de la Commission.

Il est possible d'interjeter appel des décisions de la Commission de la location à usage d'habitation relativement aux parties 1 à 8 devant la Cour d'appel, mais seulement sur une question de droit ou de compétence. Un juge de la Cour d'appel doit accorder une autorisation d'appel. L'article 179 de la *Loi sur la location à usage d'habitation* concernant le contrôle des loyers stipule ce qui suit : « *Les décisions ou les ordonnances que la*

*Commission rend à l'égard de questions régies par la partie 9 ne peuvent faire l'objet d'aucun appel.* » Dans ce cas de questions relatives à la partie 9, la décision de la Commission de la location à usage d'habitation est définitive.

La *Loi sur la location à usage d'habitation* exige du commissaire en chef qu'il soumette au ministre un rapport sur l'administration de la *Loi* six mois après la fin de chaque exercice. La période visée par le présent rapport est l'exercice se terminant le 31 mars 2016\*. Des chiffres correspondant à l'exercice se terminant le 31 mars 2015 sont également fournis à des fins de comparaison. Les statistiques sont fractionnées par activité (p. ex., dépôts de garantie, réparations, services publics).

\*Ceci représente un changement car, précédemment, la Commission de la location à usage d'habitation faisait ses rapports selon l'année civile. Ce changement permettra de faire plus efficacement des rapports car il sera plus facile de trouver des renseignements et de mettre en relation des données, y compris des statistiques entre la Direction de la location à usage d'habitation et la Commission de la location à usage d'habitation.

## **APPEAL ACTIVITY SUMMARY**

### **PARTS 1 – 8 OF *THE RESIDENTIAL TENANCIES ACT***

Parts 1 – 8 of *The Residential Tenancies Act* deal with all residential landlord and tenant matters, except for rent regulation. Table 1 provides a statistical summary of the activities of the Residential Tenancies Commission under Parts 1 – 8 of the legislation. Between April 1, 2015, to March 31, 2016, the Commission received 401 appeals under Parts 1 – 8 of *The Residential Tenancies Act*. The Commission received 327 appeals of orders resulting from Branch hearings and 51 appeals of claims for security deposit or less. The remaining 23 appeals were related to orders to repair and non-payment of utilities.

The Commission processed 364 cases from April 1, 2015, to March 31, 2016. The Commission confirmed or upheld the Residential Tenancies Branch's decisions in 143 instances. The Commission varied 121 of the Branch's decisions. These variations sometimes occurred because the Commission received information from the parties at the appeal hearing that the Branch did not have before issuing its decision. The Commission rescinded 37 decisions of the Branch. Another 34 appeals were either rejected by the Commission, withdrawn or cancelled by the appellant. Most rejections are caused by late appeals or appeals without a filing fee. Withdrawals are usually due to either: (1) the affected parties being able to reach a settlement; or (2) the appellant changing his or her mind and no longer wishing to continue with the appeal. There were 26 motions to extend time to appeal denied. There were three appeals pending as of March 31, 2016.

A person who did not attend or otherwise participate in the hearing before the director could not appeal an order granting an order of possession to a landlord for the termination of the tenancy for non-payment of rent or a tenant services charge, unless the Commission, on application, grants the person leave to appeal. The Commission received 43 applications for leave to appeal, 11 were granted leave and 32 were denied.

From April 1, 2015, to March 31, 2016, there were 23 applications to the Court of Appeal for leave to appeal as well as two applications pending from the previous fiscal year. The Court of Appeal denied leave on 11 applications. 14 applications for leave to appeal were withdrawn.

## **SOMMAIRES DES ACTIVITÉS RELATIVES AUX APPELS**

### ***PARTIES 1 À 8 DE LA LOI SUR LA LOCATION À USAGE D'HABITATION***

Les parties 1 à 8 de la *Loi sur la location à usage d'habitation* statuent sur l'ensemble des questions afférentes au locateur et au locataire d'habitation, exception faite du contrôle du loyer. Le tableau n° 1 présente un résumé statistique des activités exercées par la Commission de la location à usage d'habitation en vertu des parties 1 à 8 de la *Loi*. Entre le 1<sup>er</sup> avril 2015 et le 31 mars 2016, la Commission a reçu 401 appels relativement aux parties 1 à 8 de la *Loi sur la location à usage d'habitation*. La Commission a reçu 327 appels d'ordres provenant d'audiences de la Direction et 51 appels de réclamations du dépôt de garantie ou moins. Les 23 appels restants étaient liés à des ordres de réparation et des non-paiements de services publics.

Entre le 1<sup>er</sup> avril 2015 et le 31 mars 2016, la Commission a traité 364 causes. Dans 143 cas, la Commission a confirmé ou soutenu les décisions de la Direction de la location à usage d'habitation. La Commission a aussi modifié 121 décisions de la Direction. Parfois, ces modifications ont été dues au fait que la Commission a reçu au cours de l'audience d'appel des renseignements des parties que la Direction n'avait pas avant de rendre sa décision. La Commission a également annulé 37 décisions de la Direction, et 34 autres appels ont aussi été rejetés par la Commission, ou retirés ou annulés par l'appelant. La plupart des rejets sont causés par des appels en retard ou sans frais d'administration. Les raisons des retraits tiennent généralement du fait que : (1) les parties concernées ont pu arriver à une entente; ou (2) l'appelant a changé d'avis et ne souhaite pas poursuivre le processus d'appel. La Commission a aussi rejeté 26 motions en prorogation du délai d'appel. Trois appels étaient toujours en instance au 31 mars 2016.

Toute personne qui ne s'est pas présentée à l'audience devant le directeur ou qui n'a pas participé à celle-ci ne peut pas interjeter appel d'un ordre autorisant un ordre de reprise de possession à un locateur relativement à la résiliation d'une location pour non-paiement de loyer ou des frais de services aux locataires, à moins que la Commission, au moment de la demande, accorde à cette personne l'autorisation d'appel. La Commission a reçu 43 demandes d'autorisation d'appel : elle en a accordé 11 et rejeté 32.

Entre le 1er avril 2015 et le 31 mars 2016, il y a eu 23 demandes d'autorisation d'appel auprès de la Cour d'appel et deux demandes de l'exercice précédent étaient encore en instance. La Cour d'appel a rejeté 11 demandes d'autorisation, et 14 demandes d'autorisation d'appel ont été retirées.

**TABLE 1 - APPEALS**  
**STATISTICAL SUMMARY FOR MANITOBA**  
**PARTS 1 - 8 OF THE RESIDENTIAL TENANCIES ACT**

	<b><u>April 1, 2014 – March 31, 2015</u></b> (Cases)	<b><u>April 1, 2015 – March 31, 2016</u></b> (Cases)
<b><u>ABANDONMENT OF PERSONAL PROPERTY</u></b>		
Carried forward from previous year	0	0
Appeals Received	0	0
<b>TOTAL</b>		
Decisions Upheld	0	0
Decisions Varied	0	0
<b>TOTAL APPEALS CLOSED</b>	0	0
<b>ACTIVE</b>	0	0
<b><u>CLAIM FOR SECURITY DEPOSIT OR LESS</u></b>		
Carried forward from previous year	15	6
Appeals Received	47	51
<b>TOTAL</b>	62	57
Decisions Confirmed	21	20
Decisions Varied	19	18
Decisions Rescinded	4	3
Appeals Withdrawn/Rejected	4	3
Cancelled	1	2
Motion to Extend Time Denied	5	4
Appeals Pending	2	0
<b>TOTAL APPEALS CLOSED</b>	56	50
<b>ACTIVE</b>	6	7
<b><u>DISPUTES</u></b>		
Carried forward from previous year	0	0
Appeals Received	0	0
<b>TOTAL</b>	0	0
Decisions Varied	0	0
Decisions Rescinded	0	0
Appeals Withdrawn/Rejected	0	0
Cancelled	0	0
<b>TOTAL APPEALS CLOSED</b>	0	0
<b>ACTIVE</b>	0	0



**TABLE 1 - APPEALS**  
**STATISTICAL SUMMARY FOR MANITOBA**  
**PARTS 1 - 8 OF THE RESIDENTIAL TENANCIES ACT**

	<b><u>April 1, 2014 – March 31, 2015</u></b>	<b><u>April 1, 2015 – March 31, 2016</u></b>
	<b>(Cases)</b>	<b>(Cases)</b>
<b><u>DISTRAINT AND LOCKOUT</u></b>		
Carried forward from previous year	0	0
Appeals Received	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>
Decisions Confirmed	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>0</b>	<b>0</b>
ACTIVE	0	0
<b><u>ENFORCEMENT</u></b>		
Carried forward from previous year	0	0
Appeals Received	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>
Decisions Confirmed	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>0</b>	<b>0</b>
ACTIVE	0	0
<b><u>HEARINGS</u></b>		
Carried forward from previous year	80	53
Appeals Received	269	316
<b>TOTAL</b>	<b>349</b>	<b>369</b>
Decisions Confirmed	128	112
Decisions Varied	103	100
Decisions Rescinded	23	34
Appeals Withdrawn/Rejected	17	16
Cancelled	5	3
Motion to Extend Time Denied	18	21
Appeals Pending	2	3
<b>TOTAL APPEALS CLOSED</b>	<b>296</b>	<b>289</b>
ACTIVE	53	80

**TABLE 1 - APPEALS**  
**STATISTICAL SUMMARY FOR MANITOBA**  
**PARTS 1 - 8 OF *THE RESIDENTIAL TENANCIES ACT***

	<b><u>April 1, 2014 – March 31, 2015</u></b> (Cases)	<b><u>April 1, 2015 – March 31, 2016</u></b> (Cases)
<b><u>REPAIRS</u></b>		
Carried forward from previous year	3	2
Appeals Received	19	21
<b>TOTAL</b>	<b>22</b>	<b>23</b>
Decisions Confirmed	12	10
Decisions Varied	4	3
Decisions Rescinded	0	0
Cancelled	0	0
Appeals Withdrawn/Rejected	2	8
Motion to Extend Time Denied	2	1
Appeals Pending	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>20</b>	<b>22</b>
<b>ACTIVE</b>	<b>2</b>	<b>1</b>
<b><u>UTILITIES</u></b>		
Carried forward from previous year	0	1
Appeals Received	1	2
<b>TOTAL</b>	<b>1</b>	<b>3</b>
Decisions Confirmed	0	1
Decisions Varied	0	0
Decisions Rescinded	0	0
Appeals Withdrawn/Rejected	0	2
Cancelled	0	0
Motion to Extend Time Denied	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>0</b>	<b>3</b>
<b>ACTIVE</b>	<b>1</b>	<b>0</b>

**TABLE 1 - APPEALS**  
**STATISTICAL SUMMARY FOR MANITOBA**  
**PARTS 1 - 8 OF *THE RESIDENTIAL TENANCIES ACT***

	<b><u>April 1, 2014 – March 31, 2015</u></b> (Cases)	<b><u>April 1, 2015 – March 31, 2016</u></b> (Cases)
<b><u>TOTAL APPEALS</u></b>		
Carried forward from previous year	98	62
Appeals Received	336	390
<b>TOTAL</b>	<b>434</b>	<b>452</b>
Decisions Confirmed	161	143
Decisions Varied	126	121
Decisions Rescinded	27	37
Appeals Withdrawn/Rejected	23	29
Cancelled	6	5
Motion to Extend Time Denied	25	26
Appeals Pending	4	3
<b>TOTAL APPEALS CLOSED</b>	<b>372</b>	<b>364</b>
<b>ACTIVE</b>	<b>62</b>	<b>88</b>

	<b><u>April 1, 2014 – March 31, 2015</u></b> (Cases)	<b><u>April 1, 2015 – March 31, 2016</u></b> (Cases)
<b><u>LEAVE TO APPEAL APPLICATIONS TO THE RESIDENTIAL TENANCIES COMMISSION</u></b>		
Carried forward from previous year	0	0
Applications Received	29	43
<b>TOTAL</b>	<b>29</b>	<b>43</b>
Leave to Appeal Granted	14	11
Leave to Appeal Denied	15	32
<b>TOTAL APPEALS CLOSED</b>	<b>29</b>	<b>43</b>
<b>ACTIVE</b>	<b>0</b>	<b>0</b>

## **APPEAL ACTIVITY SUMMARY**

### **PART 9 OF *THE RESIDENTIAL TENANCIES ACT***

The Commission received appeals for 92 buildings affecting 482 rental units on orders the Residential Tenancies Branch issued under Part 9 of *The Residential Tenancies Act* between April 1, 2015, and March 31, 2016.

The Commission processed appeals on orders for 106 buildings affecting 658 rental units in the fiscal year ending March 31, 2016. The Commission upheld orders on 169 units in 35 buildings and varied orders on 415 units in 25 buildings. These variations sometimes occurred because the Commission received information at the appeal hearing that the Branch did not have before issuing its decision. Appeals in 46 other buildings affecting 74 units were either rejected by the Commission or withdrawn or cancelled by the appellant.

There is no appeal to the Court of Appeal on rent regulation matters.

## ***SOMMAIRES DES ACTIVITÉS RELATIVES AUX APPELS***

### ***PARTIE 9 DE LA LOI SUR LA LOCATION À USAGE D'HABITATION***

La Commission a reçu des appels pour 92 immeubles comptant 482 unités locatives relativement à des ordres rendus par la Direction de la location à usage d'habitation en vertu de la partie 9 de la *Loi sur la location à usage d'habitation* entre le 1<sup>er</sup> avril 2015 et le 31 mars 2016.

La Commission a traité des appels d'ordres pour 106 immeubles comptant 658 unités locatives pendant l'exercice se terminant le 31 mars 2016. La Commission a confirmé les ordres concernant 169 unités dans 35 immeubles et a modifié les ordres concernant 415 unités dans 25 immeubles. Parfois, ces modifications ont été dues au fait que la Commission a reçu au cours de l'audience d'appel des renseignements que la Direction n'avait pas avant de rendre sa décision. Des appels concernant 46 autres immeubles comptant 74 unités ont été rejetés par la Commission, ou retirés ou annulés par l'appelant.

Il n'y a pas d'appel auprès de la Cour d'appel relativement au contrôle des loyers.

**TABLE 2 - APPEALS**  
**STATISTICAL SUMMARY FOR MANITOBA**  
**PART 9 OF *THE RESIDENTIAL TENANCIES ACT***

	<b><u>April 1, 2014 – March 31, 2015</u></b>		<b><u>April 1, 2015 – March 31, 2016</u></b>	
	<b>Bldgs.</b>	<b>Units</b>	<b>Bldgs.</b>	<b>Units</b>
<b>APPLICATION - LAUNDRY INCREASE</b>				
Carried forward from previous year	0	0	0	0
Appeals Received	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Decisions Varied	0	0	0	0
Appeals Withdrawn/Rejected	0	0	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>ACTIVE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>APPLICATION - REHABILITATION</b>				
Carried forward from previous year	2	2	1	1
Appeals Received	9	10	4	14
<b>TOTAL</b>	<b>11</b>	<b>12</b>	<b>5</b>	<b>15</b>
Decisions Confirmed	3	3	1	1
Decisions Varied	1	1	0	0
Decisions Rescinded	1	1	0	0
Appeals Withdrawn/Rejected	5	6	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>10</b>	<b>11</b>	<b>1</b>	<b>1</b>
<b>ACTIVE</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>14</b>
<b>LIFE LEASE</b>				
Carried forward from previous year	0	0	1	1
Appeals Received	1	1	0	0
<b>TOTAL</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>
Appeals Withdrawn/Rejected	0	0	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>ACTIVE</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>

**TABLE 2 - APPEALS****STATISTICAL SUMMARY FOR MANITOBA  
PART 9 OF THE RESIDENTIAL TENANCIES ACT**

	<b><u>April 1, 2014 – March 31, 2015</u></b>		<b><u>April 1, 2015 – March 31, 2016</u></b>	
	<b>Bldgs.</b>	<b>Units</b>	<b>Bldgs.</b>	<b>Units</b>
<b>TENANT OBJECTIONS TO GUIDELINE OR LESS</b>				
Carried forward from previous year	0	0	0	0
Appeals Received	0	0	0	0
<b>TOTAL</b>				
Decisions Confirmed	0	0	0	0
Decisions Varied	0	0	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>ACTIVE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>APPLICATION - WITHDRAWAL OF SERVICE</b>				
Carried forward from previous year	2	3	1	24
Appeals Received	1	24	8	71
<b>TOTAL</b>	<b>3</b>	<b>27</b>	<b>9</b>	<b>95</b>
Decisions Confirmed	0	0	0	0
Decisions Varied	1	2	4	53
Appeals Withdrawn/Rejected	1	1	1	1
Appeals Cancelled	0	0	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>2</b>	<b>3</b>	<b>5</b>	<b>54</b>
<b>ACTIVE</b>	<b>1</b>	<b>24</b>	<b>4</b>	<b>41</b>
<b>COMPLIANCE</b>				
Carried forward from previous year	5	5	3	3
Appeals Received	4	4	6	6
<b>TOTAL</b>	<b>9</b>	<b>9</b>	<b>9</b>	<b>9</b>
Decisions Confirmed	3	3	1	1
Decisions Varied	2	2	3	3
Appeals Withdrawn/Rejected	0	0	0	0
Motion to Extend Time Denied	1	1	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>6</b>	<b>6</b>	<b>4</b>	<b>4</b>
<b>ACTIVE</b>	<b>3</b>	<b>3</b>	<b>5</b>	<b>5</b>

**TABLE 2 - APPEALS**  
**STATISTICAL SUMMARY FOR MANITOBA**  
**PART 9 OF *THE RESIDENTIAL TENANCIES ACT***

	<b><u>April 1, 2014 – March 31, 2015</u></b>		<b><u>April 1, 2015 – March 31, 2016</u></b>	
	<b>Bldgs.</b>	<b>Units</b>	<b>Bldgs.</b>	<b>Units</b>
<b>APPLICATION – RENT INCREASE ABOVE GUIDELINE</b>				
Carried forward from previous year	16	46	33	339
Appeals Received	106	939	74	391
<b>TOTAL</b>	<b>122</b>	<b>985</b>	<b>107</b>	<b>730</b>
Decisions Confirmed	20	31	33	167
Decisions Varied	22	352	18	359
Appeals Withdrawn/Rejected	40	247	41	59
Appeals Cancelled	6	16	3	13
Motion to Extend Denied	1	0	1	1
<b>TOTAL APPEALS CLOSED</b>	<b>89</b>	<b>646</b>	<b>96</b>	<b>599</b>
ACTIVE	33	339	11	131



**TABLE 2 - APPEALS**  
**STATISTICAL SUMMARY FOR MANITOBA**  
**PART 9 OF *THE RESIDENTIAL TENANCIES ACT***

	<b><u>April 1, 2014 – March 31, 2015</u></b>		<b><u>April 1, 2015 – March 31, 2016</u></b>	
	<b>Bldgs.</b>	<b>Units</b>	<b>Bldgs.</b>	<b>Units</b>
<b>TOTAL APPEALS</b>				
Carried forward from previous year	25	56	39	368
Appeals Received	121	978	92	482
<b>TOTAL</b>	<b>146</b>	<b>1034</b>	<b>131</b>	<b>850</b>
Decisions Confirmed	26	37	35	169
Decisions Varied	26	357	25	415
Appeals Withdrawn/Rejected	46	254	42	60
Appeals Cancelled	6	16	3	13
Decisions Rescinded	1	1	0	0
Motion to Extend Denied	2	1	1	1
<b>TOTAL APPEALS CLOSED</b>	<b>107</b>	<b>666</b>	<b>106</b>	<b>658</b>
<b>ACTIVE</b>	<b>39</b>	<b>368</b>	<b>25</b>	<b>192</b>

**TABLE 3**  
**APPEAL HEARINGS BY JUDICIAL DISTRICT**  
**RESIDENTIAL TENANCIES COMMISSION**

	<b><u>April 1, 2014 - March 31, 2015</u></b>	<b><u>April 1, 2015 - March 31, 2016</u></b>
<b>Winnipeg</b>	<b>417</b>	<b>395</b>
<b>Altona</b>	<b>0</b>	<b>0</b>
<b>Beausejour</b>	<b>0</b>	<b>1</b>
<b>Brandon</b>	<b>10</b>	<b>15</b>
<b>Carman</b>	<b>1</b>	<b>0</b>
<b>Dauphin</b>	<b>0</b>	<b>0</b>
<b>Flin Flon</b>	<b>0</b>	<b>0</b>
<b>Morden/Winkler</b>	<b>1</b>	<b>1</b>
<b>Neepawa</b>	<b>0</b>	<b>2</b>
<b>Portage la Prairie</b>	<b>3</b>	<b>8</b>
<b>Russell</b>	<b>0</b>	<b>0</b>
<b>Selkirk</b>	<b>1</b>	<b>1</b>
<b>Steinbach</b>	<b>1</b>	<b>0</b>
<b>The Pas</b>	<b>0</b>	<b>0</b>
<b>Thompson</b>	<b>1</b>	<b>0</b>
	<hr/>	<hr/>
<b>TOTAL</b>	<b><u>435</u></b>	<b><u>423</u></b>

**TABLE 4**  
**APPLICATIONS FOR LEAVE TO APPEAL TO THE COURT OF APPEAL**

	<b><u>April 1, 2014 - March 31, 2015</u></b>	<b><u>April 1, 2015 - March 31, 2016</u></b>
<b>Granted</b>	<b>12</b>	<b>0</b>
<b>Denied</b>	<b>16</b>	<b>11</b>
<b>Withdrawn/Abandoned</b>	<b>2</b>	<b>14</b>
<b>Pending</b>	<b><u>2</u></b>	<b><u>0</u></b>
	<hr/>	<hr/>
<b>TOTAL</b>	<b><u>32</u></b>	<b><u>25</u></b>

# **SIGNIFICANT DECISIONS**

## **Significant Decisions**

The following are summaries of significant decisions of the Commission and the reasons for the decisions that were issued in the 2015/16 fiscal year.

### **1. Order of Possession Granted**

The following case provides an illustration of the issues faced by the Commission when determining if a landlord is entitled to terminate a tenancy for non-payment of rent where the parties entered into a tenancy agreement plus a separate purchase sale arrangement respecting the property.

The landlord filed an application at the Residential Tenancies Branch (the Branch) seeking an Order of Possession and compensation for rent, other expenses and costs. The landlord terminated the tenancy agreement for non-payment of rent pursuant to subsection 95.1(1) of *The Residential Tenancies Act*.

#### **Termination for non-payment**

95.1(1) If a tenant fails to pay

(a) the rent...

within three days after it is due, the landlord may give the tenant a notice terminating the tenancy on the day the payment was due.

After considering the evidence and submissions of the parties, the Commission panel decided to grant the landlord an Order of Possession and an Order of compensation for rent and costs. The orders of the Residential Tenancies Branch were rescinded.

The tenants intended to buy the landlord's house, subject to getting financing. They also intended to live in the house as rent-paying tenants in the interim. The landlord had already paid for the annual house insurance. The parties signed an Offer to Purchase document which also contained provisions about the tenancy, including the amount of monthly rent. When signing the Offer to Purchase, the tenants paid \$12,000 to the landlord. The Offer to Purchase referred to a \$12,000 non-refundable deposit to be applied towards the purchase price.

The tenants moved in and began paying monthly rent as agreed. After several months, the tenants were late with their rent and an angry email exchange ensued. The tenants refused to pay any rent since. The tenants had not arranged for financing, but the deadline for doing so had not expired as of the hearing date.

The tenants argued that the landlord should apply the \$12,000 towards rent. If he did, all rent to date would have been fully paid on time. Also, the tenants said they had no obligation to reimburse the landlord for house insurance.

The landlord argued that the \$12,000 was never intended to be used to pay rent. It was only intended to be used towards the purchase price of the house. The tenants were many months behind on rent, so the landlord said he was entitled to an Order of Possession and to be paid rent until the tenants moved out. Also, the landlord said that the Offer to Purchase implied that the tenants would reimburse the landlord for house insurance.

The Commission panel considered with the hybrid nature of the document containing both an Offer to Purchase and residential tenancies conditions (the Agreement). Based on the parties' inferred intentions and the conduct of the parties until the tenants stopped paying rent, the panel concluded that the \$12,000 was never intended to be used for rent. Therefore, the landlord was entitled to an Order of Possession and to payment of rent until the date the tenants move out.

As for the house insurance, the panel concluded that it did not have jurisdiction to determine whether or not the tenants should reimburse the landlord for this item. The provisions regarding house insurance were part of the house deal (over which the courts have exclusive jurisdiction), rather than the residential tenancy (over which the Branch and Commission have jurisdiction).

## 2. Determination of entitlement to compensation under Section 98 of the Act

The tenant asked for a determination of whether she was entitled to compensation under Section 98 of *The Residential Tenancies Act* (the *Act*). The landlord terminated the tenancy agreement pursuant to clause 98(1)(b) on the basis that the landlord's adult son would occupy the unit:

### Termination on sale or for landlord's use

98(1) A landlord may give a notice of termination to a tenant, other than a tenant under a life lease, if

...

(b) the landlord intends in good faith that the landlord, the landlord's spouse, a parent of the landlord or the landlord's spouse or any of the adult children of the landlord or the landlord's spouse will occupy the rental unit.

This dispute focused on whether the adult son of the landlord moved into the rental unit within a reasonable time and whether he stayed there the entire 12 months and thus avoided the landlord's liability under subsections 98(4) and (5) of the *Act*.

### Payment of compensation

98(4) On application by a tenant who vacates a rental unit after being given a notice of termination under subsection (1), the director may make an order requiring

...

(b) the landlord, in the case of a notice under clause (1)(b);

to compensate the tenant for his or her reasonable additional expenses, as determined by the director, **if the occupancy of the rental unit by a person referred to in that clause does not begin within a reasonable period of time or does not continue for at least 12 months.**

(Emphasis added)

### Determination of tenant's expenses

98(5) On application by a tenant, the director shall determine the amount of a tenant's moving and additional expenses under this section, and the additional expenses may include any increased rent or tenant services charge, or both, that the tenant is or may be obliged to pay because of the termination, for up to 12 months.

The landlord terminated the tenancy pursuant to section 98 of the *Act* so that his adult son could move into the rental unit. The tenant moved out in early August, 2013 and according to the landlord, his adult son moved into the property later in August, 2013.

However, the tenant provided sufficient evidence to establish that the adult son did not appear to have moved into the residence for other than a short period of time. She provided persuasive evidence that the adult son was not really living in the property such as photographs showing the unit was very sparsely furnished and evidence of renovations being done in the rental unit by the following spring. There was also evidence of the property being unattended for large periods of time including a lack of snow removal, accumulated mail, and uncut lawns. The landlord acknowledged that they rented the property out for June 1, 2014.

The landlord did not provide his adult son as a witness and could not provide any evidence that his son lived there: there was no mail in his name at that address, no legal documents, no lease, no proof of payments, and the hydro and other legal documents remained in the name of the landlord.

The panel found that there was sufficient evidence to indicate the rental unit was not being lived in, and certainly not for the full 12 months, as required in the legislation.

Section 98 allows for a *bona fide* situation where the landlord can terminate the lease and have a family member take possession. The section specifically lists a period of 12 months. The reason for this is to ensure that the occupation is genuine, lasting and not a mere market or business convenience to eject a tenant without some fairness or on the whim of a landlord in whatever circumstances might arise.

The tenant had to find a new rental property and luckily was able to do so in the same general neighbourhood, in a property that was approximately similar. The rent for the new property was not excessive for the area and market. Uprooting 12 years of life and having to move with a few months notice created stress, inconvenience and expense.

From August 2013 to September 2014, the additional monthly rent was \$620, an increase of some 75%. It was however acknowledged that the new premises was slighter newer, in better condition and had an additional half bathroom, a garage and air conditioning, which the original property did not provide. The panel reviewed all of the materials, the evidence and testimony by all the parties and determined that the approximate increase in amenities accorded to approximately 15% increase. Accordingly, the appropriate increase in rent should be set at 85% of the increase, so approximately \$527 of the \$620 monthly cost. As the panel was satisfied that the landlord's son had resided in the rental unit for the month of August, one month's adjusted rent was deducted and the tenant was awarded \$5,797 (11 months X \$527). The order of the Residential Tenancies Branch was varied.



### 3. Application – Rent Increase Above Guideline

The following case provides an illustration of some of the issues that the Commission needs to address when determining a tenant appeal of a landlord's application for a rent increase above guideline. According to subsection 132(2) of *The Residential Tenancies Act* (the *Act*), a landlord who desires to increase the rent for a rental unit by more than the maximum increase permitted by the regulations, shall apply to the Residential Tenancies Branch director for an order permitting the increase. In this case, the landlord applied for a rent increase of 8.3%. After considering the information provided by the landlord and tenants, the Branch approved an increase of 8.2% and issued Orders to that effect. Tenants from 74 units submitted an appeal to the Residential Tenancies Commission.

The tenants submitted that they were all tired of the large rent increases. A number of tenants had specific repair and maintenance concerns and expressed concerns about affordability. Some tenants raised concerns that repairs had not been done in their own rental units, yet they were still subject to an above guideline rent increase. A tenant questioned why the landlord had installed new toilets when there was nothing wrong with the ones they had. Another had questions regarding their discount agreement. A number of tenants also expressed concern about the noise and disruption caused by work the landlord was doing on the parkade. Finally, several tenants also questioned the right of the landlord to apply for a rent increase above guideline year after year.

The landlord representative submitted that he realized that the tenants were frustrated with the increases and explained the reasoning behind some of the expenses. He advised that the new toilets installed were water saving and that it would help to decrease future costs and therefore keep the rent lower. He pointed out that the landlord must maintain the building and that the rents were escalating due to increased expenses. He further advised that the landlord had no control over pensions, current labour rates and the increased costs of utilities. He stated that the landlord had a good record of justified increases and that it tried to minimize the impact on the tenants.

A rent increase above guideline is determined by the landlord's expenses relating to the complex. The landlord decides what work to do in their building and provides copies of general ledgers and or invoices for the reported expenses. The Branch reviews the

invoices and ledgers provided by the landlord to ensure the expenses are correct and reasonable and in accordance with the *Act* and the *Residential Rent Regulation*.

The Commission considered the tenants' notice of appeal and submissions made at the hearing detailing concerns regarding affordability and general maintenance and repair of the building. Those issues are not determinative of a rent increase application. Matters such as repairs or disruption caused during renovations or concerns regarding discounts can be dealt with separately through the Branch if the parties cannot resolve them on their own.

With respect to the concerns by tenants that the expenses did not relate to their own rental units, the Commission noted that an application for a rent increase above the amount permitted by the regulations is based on the actual expenses incurred by the landlord in the operation of the residential complex as a whole. The landlord on its application apportioned the total rent increase for the residential complex amongst the rental units by an equal percentage pursuant to section 125 of the *Act*.

The tenants did not dispute any of the expenses claimed by the landlord which were the basis of the rent increase application. Also, the tenants did not put any of the findings of fact made by the director of the Branch in issue. Pursuant to section 168 of the *Act*, the Commission may adopt the director's findings of fact except insofar as a party to an appeal puts them in issue. Accordingly, the Commission adopted the director's findings of fact and, pursuant to subsection 170(1) of the *Act*, confirmed the decision and order of the Branch.

**The Public Interest Disclosure (Whistleblower Protection) Act**

The Public Interest Disclosure (Whistleblower Protection) Act came into effect in April 2007. This law gives employees a clear process for disclosing concerns about significant and serious matters (wrongdoing) in the Manitoba public service, and strengthens protection from reprisal. The Act builds on protections already in place under other statutes, as well as collective bargaining rights, policies, practices and processes in the Manitoba public service.

Wrongdoing under the Act may be: contravention of federal or provincial legislation; an act or omission that endangers public safety, public health or the environment; gross mismanagement; or, knowingly directing or counseling a person to commit a wrongdoing. The Act is not intended to deal with routine operational or administrative matters.

A disclosure made by an employee in good faith, in accordance with the Act, and with a reasonable belief that wrongdoing has been or is about to be committed is considered to be a disclosure under the Act, whether or not the subject matter constitutes wrongdoing. All disclosures receive careful and thorough review to determine if action is required under the Act, and must be reported in a department’s annual report in accordance with Section 18 of the Act. The Residential Tenancies Commission has received an exemption from the Ombudsman under Section 7 of the Act. As a result any disclosures received by the Chief Commissioner or a supervisor are referred to the Ombudsman in accordance with the exemption.

The following is a summary of disclosures received by the Residential Tenancies Commission for April 1, 2015 to March 31, 2016:

<b>Information Required Annually (per Section 18 of the Act)</b>	<b>April 1, 2015 to March 31, 2016</b>
The number of disclosures received, and the number acted on and not acted on. <i>Subsection 18(2)(a)</i>	<b>NIL</b>